IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R.No. 4 of 2004
Date of decision: 9.11.2006

The Commissioner of Income-tax, Jalandhar

Applicant
through
Dr. N.L.Sharda, Advocate

v.

M/s Kumar & Co., Jalandhar **Respondent**
through
Nemo

CORAM:

Hon'ble Mr.Justice Ajay Kumar Mittal
Hon'ble Mr.Justice Rajesh Bindal

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, `the Tribunal'), arising out of its order dated 29.10.1993 in I.T.A. Nos. 442 and 318 (ASR)/1989, in respect of assessment year 1985-86:

> "(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the expenses on account of commission amounting to Rs. 88,660/- and discount amounting to Rs. 1,88,300/- are not to be taken into account for the purpose of disallowance under Section 37(3A) of the Income-tax Act ?
> (2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in applying the amended provisions of Section 43B of the Income-tax Act to the proceedings for the assessment year 1985-86 when the amendment was effected from 1.4.1988?"

Learned counsel for the Revenue, at the very out-set, fairly conceded that the questions of law, referred to this Court for opinion, are covered by the judgment of this Court and the Supreme Court respectively.

As far as question No. (1) is concerned, the same is conceded to be covered by a judgment of this Court in Commissioner of Income-tax v. Indo Asian Switchgears (P) Ltd., (2002) 257 ITR 645, which was followed by this Court in I.T.R. No. 134 of 1996 – The Commissioner of Income Tax, Jalandhar v. M/s JMP Manufacturing Co., Preet Nagar, Jalandhar, decided on 5.9.2006. Accordingly, this question is answered against the Revenue and in favour of the assessee.

As far as question No. (2) is concerned, concededly the same has been answered against the Revenue and in favour of the assessee in the judgment of Hon'ble the Supreme Court in Allied Motors (P.) Ltd. v. Commissioner of Income-Tax, (1997) 224 ITR 677. Accordingly, this question is also answered against the Revenue and in favour of the assessee.

The reference is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

(Ajay Kumar Mittal)
Judge

9.11.2006
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